

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT RANDY TURNER, SR.,

Defendant-Appellant.

UNPUBLISHED

February 15, 2011

No. 296113

Oakland Circuit Court

LC No. 2009-227139-FH

Before: MURPHY, C.J., and MURRAY and SHAPIRO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of possession of marijuana, second offense, MCL 333.7403(2)(d), and third-degree fleeing and eluding, MCL 750.479a(3). Defendant was sentenced, as a fourth habitual offender, MCL 769.12, to two years' probation with one year in the county jail for the fleeing and eluding conviction and to 90 days in the county jail for the marijuana conviction. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that the prosecution failed to provide sufficient evidence to convict him of third-degree fleeing and eluding. We disagree. When reviewing a claim of insufficient evidence, we examine the record de novo. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). We review the evidence in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). Circumstantial evidence and reasonable inferences that arise from such evidence can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

In *People v Grayer*, 235 Mich App 737, 741; 599 NW2d 527 (1999), this Court, citing MCL 750.479a(3), summarized the applicable elements of the offense at issue:

[T]here are six elements necessary to establish third-degree fleeing and eluding: (1) the law enforcement officer must have been in uniform and performing his lawful duties and his vehicle must have been adequately identified as a law enforcement vehicle, (2) the defendant must have been driving a motor vehicle, (3) the officer, with his hand, voice, siren, or emergency lights must have ordered the defendant to stop, (4) the defendant must have been aware that he had been ordered to stop, (5) the defendant must have refused to obey the order by trying to flee from the officer or avoid being caught, which conduct could be evidenced by speeding up his vehicle or turning off the vehicle's lights among other things, and (6) some portion of the violation must have taken place in an area where the speed limit was thirty-five miles an hour or less, or the defendant's conduct must have resulted in an accident or collision.

After examining the evidence in a light most favorable to the prosecution, we hold that there was sufficient evidence for the jury to find that all of the elements of third-degree fleeing and eluding were proven beyond a reasonable doubt. In the present case, state troopers Whitcomb and Weinrick testified that they were wearing their Michigan State Police Class A uniforms. The troopers further stated that they were performing their lawful duties of patrolling the streets in a clearly marked state police vehicle. Troopers Whitcomb and Weinrick also asserted that defendant was driving a motor vehicle, specifically a 1979 Pontiac. This testimony was sufficient for the jury to find that elements one and two of the offense were proven beyond a reasonable doubt, i.e., that the troopers were in uniform and performing lawful duties, that they were in an identifiable law enforcement vehicle, and that defendant was driving a motor vehicle.

There was also sufficient evidence for the jury to conclude that elements three and four of the offense were proven by the prosecution beyond a reasonable doubt, i.e., that defendant was ordered to stop and that defendant was aware of the order. Specifically, the troopers testified that, after observing defendant make a right hand turn without using a turn signal, turn off his lights, and run through several stops signs, they activated their police vehicle's emergency lights. They stated that they activated their lights when they were about two car lengths away from defendant. Furthermore, the troopers testified that there were never any other vehicles between the police vehicle and defendant's vehicle during the course of the pursuit. In fact, the troopers asserted that there were no other vehicles on the street at that late hour. The troopers subsequently activated their siren, yet defendant did not respond by immediately slowing down; instead, he accelerated a little. This evidence was sufficient for a reasonable juror to find that the troopers had ordered defendant to stop by way of activating the police vehicle's emergency lights and siren. The evidence was also sufficient for the jury to infer that defendant was aware that he had been ordered to stop, where there were no other vehicles on the street at that late hour, the illuminated police vehicle was following close behind defendant's vehicle, and the police siren eventually blared.

The prosecution also provided sufficient evidence for a reasonable juror to find that element five of the offense, i.e., that defendant refused to obey the order by trying to flee from the troopers or avoid being caught, was proven beyond a reasonable doubt. The troopers testified that they observed defendant erratically pull out of a restaurant parking lot and speed down the street. Defendant then made a quick right-hand turn onto a street, turned off his vehicle lights, and proceeded to run some stop signs. Although this activity in and of itself could

not constitute acts of fleeing and eluding police, as the troopers had not yet signaled defendant to stop, it did provide some circumstantial evidence that defendant was attempting to avoid the troopers that night, that he was aware of their presence, and that his later actions after police lights and siren were activated reflected an intent to flee and elude police. The troopers testified that after they activated their police vehicle's lights, defendant failed to stop despite being given this visual order to stop. The troopers stated that defendant kept driving fast down the residential street, exceeding the speed limit and making no attempt to stop. Troopers Whitcomb and Weinrick also testified that they eventually engaged their siren, yet defendant accelerated, continued to drive for a block, and then abruptly came to a stop. The evidence was sufficient for the jury to find that defendant refused to obey the orders to stop and for the jurors to infer that defendant was attempting to flee and elude the troopers or avoid being caught. See *People v Perez-DeLeon*, 224 Mich App 43, 59; 568 NW2d 324 (1997) (given the difficulty in proving a defendant's state of mind, circumstantial evidence can suffice to establish that the defendant possessed the requisite intent).

Defendant argues that his actions in turning off his lights cannot be deemed responsive to any visual signal to stop because neither the troopers' lights nor siren had yet been activated. As indicated above, the evidence that defendant turned off his lights did not constitute an act of fleeing and eluding, but it could be used as circumstantial evidence of his intent with respect to subsequent actions following orders to stop. Further, there was other evidence reflecting commission of the crime of fleeing and eluding. That is, after the troopers engaged the police vehicle's lights, defendant sped down two short blocks on Madison, turned on Kettering while accelerating his speed, and then, despite activation of the police vehicle's siren, continued to travel down a long block on Kettering, before he halted to the troopers' order to stop.

There was also sufficient evidence for a reasonable juror to find that element six of the offense was proven beyond a reasonable doubt. Specifically, the troopers testified that defendant was driving 40 to 50 miles per hour in a 25 miles per hour zone. In sum, there was sufficient evidence to find that all of the essential elements of the crime were proven beyond a reasonable doubt.

In challenging the sufficiency of the evidence, defendant argues that a rational explanation for his vehicle lights shutting off was that his vehicle was old and malfunctioned. He also argues that he did not immediately stop because there were other vehicles parked on the street and his old vehicle required more distance to properly stop. Again, the issue regarding the lights on defendant's vehicle does not alter the fact that there were subsequent actions taken by defendant that established the crime of fleeing and eluding. On the argument of parked vehicles and needing room to stop, it fails to address and negate the evidence that defendant was speeding and did not slow down after police emergency lights were activated and that defendant even accelerated after the siren was engaged. Moreover, the prosecution is not required to negate every possible theory that is consistent with a defendant's innocence. *People v Hardiman*, 466 Mich 417, 423-424; 646 NW2d 158 (2002). Rather, the prosecution need only introduce evidence sufficient to convince a reasonable jury of the defendant's guilt in light of any contradictory evidence presented by the defendant. *Id.* at 424.

Defendant emphasizes the brevity of the chase, arguing that the short time period that elapsed between when the police first activated their emergency lights and when defendant

pulled over did not justify the charge or support the conviction. Regardless of the length of time that elapsed, defendant's actions in failing to slow down, accelerating, turning down another road, and then continuing to drive, all supported the conviction. When viewed in a light most favorable to the prosecution, the evidence presented by the prosecution at trial was sufficient to meet its burden of proof.

Affirmed.

/s/ William B. Murphy
/s/ Christopher M. Murray
/s/ Douglas B. Shapiro